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09/588,037	06/05/2000	J. Gregory Stout	A-68146/MAK/LM	8559
30636 7590 01/29/2007 FAY KAPLUN & MARCIN, LLP 150 BROADWAY, SUITE 702 NEW YORK, NY 10038			EXAMINER KOPPIKAR, VIVEK D	
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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/588,037
Filing Date: June 05, 2000
Appellant(s): STOUT, J. GREGORY

MAILED

JAN 29 2007

GROUP 3600

Oleg F. Kaplun
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed June 26, 2006 appealing from the Office action
mailed January 17, 2006.

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(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

US Patent Number 6055573 Gardenswartz 4-2000

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

2. Claims 30-49 are rejected under 35 U.S.C. 102(e) as being anticipated by US

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Patent Number 6,055,573 to Gardenswartz.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

As per claims 30, 37-41 and 43-47, Gardenswartz discloses a method comprising: identifying a consumer at a first merchant location where the consumer presents an instrument during a processing of a first transaction at the first merchant location, wherein the consumer is identified with a unique identification (Col. 5, Ln. 44-60). The consumer identification is received through a data capture device (a first computer (10); Col. 5, Ln. 30-43 and Figure 1). Gardenswartz teaches the steps of presenting an offer to the consumer based on information from the first transaction (Col. 10, Ln. 23-34), receiving an indication of acceptance of the offer from the consumer (Col. 16, Ln. 36-55), associating the indication of acceptance with the unique

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identification of the consumer (Col. 16, Ln. 56-65), identifying the consumer at a second merchant location where the consumer presents the instrument during the processing of a second transaction tool (Col. 17, Ln. 3-44 and Col. 19, Ln. 17-48) and retrieving the offer based on the identification of the consumer at the second merchant location, where the offer is applied to the second transaction (Col. 17, Ln. 3-44 and Col. 19, Ln. 17-48).

The unique consumer identification record is stored in a data farm device (purchase history database (8); Col. 5, Ln. 36-37 and Figure 1)). The offer in Gardenswartz is displayed on an offer display device (a first computer (10); Ln. 30-42 and Figure 1). In Gardenswartz, there is a further data capture device (various computers linked to the Internet (20); Col. 5, Ln. 30-43).

As to claim 32 and 48, Gardenswartz discloses the method of claim 30, wherein the offer is a discount on merchandise (col. 14, lines 56-60).

As to claim 33, Gardenswartz discloses the method of claim 30, wherein the second merchant location is independent from the first merchant location (see Fig. 1).

As to claims 34 and 49, Gardenswartz discloses the method of claim 30, wherein the information from the first transaction includes an identification of a purchased product (see Fig. 2).

As to claim 35, Gardenswartz discloses the method of claim 30, further comprising the step of disassociating the indication of acceptance with the unique identification when the consumer completes the second transaction (col. 20, lines 25-30).

As to claim 36, Gardenswartz discloses the method of claim 30, further comprising the step of:

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dissociating the indication of acceptance with the unique identification when the second transaction is incomplete after expiration of a predetermined period of time (Col. 16, Ln. 50-55).

(10) Response to Arguments

Appellant makes the following arguments in the Appeal Brief filed on June 26, 2006 which will now be addressed by the Examiner:

(A) The cited references do not disclose receiving an indication of acceptance of the offer from the consumer at the first merchant location and retrieving the offer based on the identification of the consumer at the second merchant location, wherein the offer is applied to a second transaction. The applicants go on to make three specific arguments:

I. The applicants argue that in the Gardenswartz patent the first retail location and the second retail location are the same, which is not analogous to the limitations in claim 30. To respond to this argument the examiner would like to point out that Gardenswartz states that the first merchant location is separate from the second merchant location (Figure 1; Col. 5, Ln. 36-42 and 61-67 and Col. 19, Ln. 37-48).

II. The applicants argue that Gardenswartz does not specify that the consumer must accept the offer during a first transaction at a first merchant location, however the examiner would like to point out that Gardenswartz does in fact teach this feature (Col. 19, Ln. 37-48).

III. The applicants argue that Gardenswartz does not mention or suggest the step of “associating the indication of acceptance with the unique identification of the consumer” prior to redeeming the reward. However, Gardenswartz does in fact teach this feature (Col. 17, Ln. 18-28 and Col. 19, Ln. 42-48).

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IV. The applicants have reiterated the same arguments with regards to claims 37 and 46 as they have made for Claim 30. Therefore, the Examiner has addressed these arguments in the same manner as the arguments for claim 30, as set forth above.

(11) Related Proceedings(s) Appendix


No decision rendered by a court or the Board is identified by the Examiner in the Related Appeals and Interferences section of this Examiner's Answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,



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